

Recent Changes in the Ethics Rules

- **Mr. Mark F. Stone**
- **Ethics & Fraud Remedies Directorate,
AFMC Law Office, Wright-Patterson AFB
OH**
- **Our ethics website: [http://www.afmc-pub.
wpafb.af.mil/HQ-AFMC/JA/lo/lojaf](http://www.afmc-pub.wpafb.af.mil/HQ-AFMC/JA/lo/lojaf)**
- **May 2003**

Overview -- 12 topics

- **Conflicts of interest**
- **Financial disclosure**
- **Fundraising**
- **Gifts from outside sources**
- **Gifts to superiors**
- **Government property**
- **Non-Federal organizations**
- **Procurement Integrity law**
- **Post-government employment**
- **Training**
- **Travel**
- **Miscellaneous**

Conflict of Interest -- Stock Ownership

- **Amount of stock in a company that a govt employee may own and still perform official duties involving the company increased to \$15,000. (See 19 Mar 02 DAEO-gram)**
- **Provision at 5 CFR 2640.202(a)**
- **Change published in 19 Mar 02 Fed Register**
- **Change effective on 18 Apr 02**

Conflict of Interest -- Representation

- **18 USC 203 & 205 generally prohibit Federal employees from representing entities before a Federal agency**
- **Recent court case held that representation is prohibited by 18 USC 205 only if there is a principal-agent relationship (the O'Neill case - Federal Circuit - 2000)**
- **OGE has drafted a legislative proposal to make these statutes less overbroad**

Financial Disclosure -- OGE Form 450

- **OGE Form 450 is the Confidential Financial Disclosure Report**
- **Beginning in 2003, we must use the OGE Form 450 that is dated 9/02 (see 22 Oct 02 DAEO-gram)**
- **Office of Government Ethics (OGE) is currently reviewing the confidential financial disclosure program**

Financial Disclosure -- SF 278

- **SF 278 is the Public Financial Disclosure Report**
- **Intergovernmental Personnel Act (IPA) employees who earn more than a certain amount must file the SF 278 (see 9 Dec 02 DAEO-gram)**
- **In 2001, OGE submitted to Congress a legislative proposal to simplify the SF 278**

Fundraising -- CFC

- **6 Dec 01 Office of Special Counsel press release states that it is improper to award Federal employees administrative leave in exchange for contributing to CFC at a certain level**
- **12 Jul 02 change to fundraising AFI states that we can have special events to raise money for CFC, but may not have a special event to raise money for a single specified CFC charity**

Fundraising -- Wearing the Uniform

- **Legal authorities on the issue of whether Air Force members may wear the uniform while attending a FR event in a personal capacity:**
 - **OpJAGAF 1998/103 states: “because participation [at the fundraising event] must be in a personal capacity, the employee should not wear the military uniform at the function.”**
 - **JER 3-300 says DoD employees may voluntarily participate in FR activities in their personal capacities, “provided they act exclusively outside the scope of their official positions”**

Fundraising -- Wearing the Uniform

- **Legal authorities on the issue of whether Air Force members may wear the uniform while attending a FR event in a personal capacity:**
 - **AFI 36-2903 (the uniform AFI) prohibits wearing the uniform if it furthers private employment, commercial interests or political activities**
 - **AFI 36-2903 is silent on wearing the uniform at fundraising events**

Gifts -- Contest Prizes

- **There is an exclusion from the definition of a “gift” for contest prizes if:**
 - **The contest is “open to the public” in that there is no cost to enter the contest,**
 - **The contest is “open to the public” in that there is no cost to attend the event where the contest takes place, and**
 - **Entering the contest is not required by or related to the performance of the government employee’s official duties. [5 CFR 2635.203(b)(5); OGE Informal Advisory Opinions 99 X 7 and 00 X 6]**

Gifts -- Gifts from Foreign Governments

- **Dollar amount for gift of minimal value (i.e., a gift that a govt employee may keep) has increased from \$260 to \$285**
- **Change was published in 4 Sep 02 Federal Register & effective on 1 Jan 02**
- **DoD Directive 1005.13 on gifts from foreign governments was revised on 6 Dec 02 to reflect the new \$ amount**

Gifts -- Soliciting Gifts

- **OpJAGAF 1998/71 - soliciting gifts in your personal capacity**
- **Recent example - soliciting junior employees for gifts for senior employees**

Gifts -- Supplementation of Federal Salary

- **Prohibited by 18 USC 209**
- **Example: \$50 gift certificate at contractor store for Air Force employees as thank you for performing official duties on IPT**
- **1 Jul 02 - OGE published 27-page pamphlet containing guidance on this law**
- **Pamphlet available on OGE website and AFMC Law Office website**

Gifts -- Widely Attended Gathering Rule

- **Rule on gifts from non-sponsors - change from \$260 to \$285 (published in 2 Oct 02 Federal Register & effective on 2 Oct 02)**
- **25 Oct 99 HQ USAF/JAG opinion on WAG rule and golf tournaments**
- **Govt employees playing golf at prestigious golf courses & paying own greens fees**
- **Need for diversity of views or interests**

Gifts to Superiors -- Exception to \$300 Limit

- **There is a \$300 limit on retirement gifts to a superior from a group of subordinates**
- **There is an exception to the \$300 limit if the gift is “appropriate for the occasion” and is “uniquely linked to the departing employee’s position or tour of duty, and commemorates the same” (HQ USAF/JAG message, 10 Jan 97)**

Government Property -- Commander's Coins

- **Recent guidance**
 - **AFI 65-601, Vol 1, 24 Dec 02, para. 4.29.2**
 - **OpJAGAF 1999/23**

Government Property -- Expenses for Professional Credentials

- **On 28 Dec 01, Congress enacted 5 USC 5757, which states: “An agency may use appropriated funds... to pay for (1) expenses for employees to obtain professional credentials, including expenses for professional accreditation, State-imposed and professional licenses, and professional certification; and (2) examinations to obtain such credentials.”**
- **AFI 65-601, Vol 1, 24 Dec 02, para. 4.47.1 states that “AF/DP is working on the specific Air Staff implementation guidance for this statutory provision”**

Government Property -- Retirement Ceremonies

- **Recent change: AFI 65-601, Volume 1, para. 4.27 states that appropriated funds may not be used to pay for commercial printing (including DAPS) of invitations or programs for a retirement ceremony**
- **Exception if retirement ceremony is performed concurrently with a formal change of command ceremony**

Government Property -- Official Representation Funds (ORFs)

- **How much in ORF funds can be spent on a memento for a visiting VIP?**
- **DoD Directive 7250.13, 10 Sep 02 - \$260**
- **AFI 65-603, 30 Jan 02 - \$260**
- **23 Dec 02 memo by the Office of the Secretary of Defense, Administration and Management - \$285**

Government Property -- Postage

- **Previous DoD Official Mail Manual said that appropriated fund postage may be used to mail “official announcements of official retirement ceremonies”**
- **The current DoD Official Mail Manual says that appropriated fund postage may be used to mail “official announcements of official retirement, promotion, award, change-of-command, and ship commissioning or decommissioning ceremonies” (DoD 4525.8-M, 26 Dec 01, para. C1.3.10)**

Government Property -- SM&W Funds for Promotions and Retirements

- **Special Morale and Welfare (SM&W) funds may be used to pay for certain costs of promotion and retirement ceremonies (AFI 34-201, Table 12.1, Rules 11-18)**
- **Within AFMC, \$30 is permitted for promotions and \$75 for retirements**
- **Contact your protocol office to apply for these funds**

Government Property -- Job Hunting

- **OpJAGAF 2000/83 - supervisor may allow AF employees to use govt computer (e.g., e-mail & Internet) for job hunting, including**
 - **Internet searches on personal time**
 - **Non-broadcast e-mail messages**
- **However, supervisor may not approve:**
 - **Internet searches on government time**
 - **Broadcast e-mail messages**
 - **Printing resume on govt computer**

Non-Federal Organizations -- Community Relations

- **DoD Directive 5410.18, Public Affairs Community Relations Policy, 20 Nov 01 (49 pages)**
- **DoD Instruction 5410.19, Public Affairs Community Relations Policy Implementation, 13 Nov 01 (81 pages)**
- **AFI 35-101, Public Affairs Policy and Procedures, 26 Jul 01 (352 pages)**

Non-Federal Organizations -- Military Band Support

- **AFI 35-101, Public Affairs Policy and Procedures, 26 Jul 01, Chapter 10, has guidance on providing military band support to events sponsored by non-Federal organizations**
- **AFI 35-101 is a public affairs regulation and thus it is appropriate to get PA involved in these issues**

Non-Federal Organizations -- DoD Liaisons

- **If the commander or civilian director of a DoD or AF organization wants to have a representative at the meetings of a non-Federal organization, he or she may appoint a DoD Liaison to the organization**
- **Before appointing a DoD Liaison, the commander or civilian director must determine that having a DoD Liaison would serve “a significant and continuing DoD interest”**

Non-Federal Organizations -- DoD Liaisons

- On 18 Mar 03, HQ USAF/JAG advised that the CC or civilian director (i.e., the person in charge) of a “major organization” may serve as a DoD Liaison without being appointed by his or her superior, i.e., may appoint himself/herself as a DoD Liaison**
- Major organizations include MAJCOMs, Numbered Air Forces, Air Logistics Centers, Product Centers, Test Centers, installations, wings, and AFOSR**

Non-Federal Organizations -- DoD Liaisons

- **On 18 Mar 03, HQ USAF/JAG also advised:**
 - **Shouldn't have too many Liaisons -- should pick & choose the organizations that are appropriate for a Liaison**
 - **Liaisons may not participate in management**
 - **Liaisons are the “eyes and ears” of the commander**

Non-Federal Organizations -- Guidance from HQ USAF/JAG

- **4 Feb 00 HQ USAF/JAG
Memorandum for All SJAs,
“Support for Professional
Military Associations”**
- **18 Dec 00 TJAG Special Subject
Letter 2000-16, “Participation in
Private Organizations in a
Personal Capacity”**

Non-Federal Organizations -- Personal Financial Training

- **5 Aug 02 HQ USAF/JAG Memo to All SJAs establishes guidelines for allowing non-Federal organizations to provide personal financial training to Air Force members**
- **Memo on HQ USAF/JAG website**
- **Memo implements 29 Apr 02 memo by Assistant Secretary of Defense for Personnel and Readiness**

NFOs -- Providing DoD Employees as Speakers at Non-Federal Organization Events

- **A DoD organization may provide an employee as a speaker at an event sponsored by a non-Federal organization if seven criteria are met. [JER 3-211a] The two key criteria are:**
 - **The DoD organization is willing to provide speakers for events by other organizations (i.e., can't give preferential treatment).**
 - **The admission fee is reasonable, or DoD's support to the event is incidental.**

Non-Federal Organizations -- Serving as Advisor to Defense Contractor

- **On 7 May 99, DoD/GC issued memo on DoD employees serving as advisors to DoD contractors (memo on SOCO website)**
- **Employees may not serve as advisors to defense contractors in official capacity**
- **Employees may do so in personal capacity, if it complies with the 12 conditions listed in the memo**

Non-Federal Organizations -- Tech Transfer

- **Government property may be used only for authorized purposes. [5 CFR 2635.704]**
- **Federal statutes, DoD regulations, and Air Force regulations authorize the provision of manpower and materials to private companies under certain circumstances, if it will promote or accomplish “technology transfer.” [See Air Force Policy Directive 61-3; Air Force Instruction 61-301]**

Procurement Integrity Law

- **Procurement Integrity Law (41 USC 423) implemented at FAR 3.104**
- **Revised FAR 3.104 published in Federal Register on 20 Mar 02**
- **Revised FAR 3.104 effective on 4 Apr 02**

Post-Government Employment -- 18 USC 207 and OGE Opinion 99 X 19

- **Under the lifetime representation ban (18 USC 207(a)(1)), a former govt employee may not make any communication to or appearance before any employee of the Executive Branch, with the intent to influence that employee, in connection with any contract or other particular matter in which the employee participated personally & substantially**
- **In Informal Advisory Opinion 99 X 19, OGE said that, if the lifetime ban applies to a former employee regarding a govt contract, the former employee may not go to work for a support contractor and give advice to the govt regarding the contract**

Post-Government Employment -- 18 USC 207 and the 19 Jan 00 OLC Opinion

- **On 19 Jan 00, the Office of Legal Counsel of the DOJ issued an opinion creating the “self-attribution exception to the behind the scenes exception”**
- **The opinion held that a former employee does not confine herself to permissible behind the scenes activity when she con-veys information to the government through an intermediary and does so with the intent that the information be attributed to her.**

Post-Government Employment -- Proposed Regulation on 18 USC 207

- On 18 Feb 03, OGE published in the Federal Register a proposed regulation that provides guidance on interpreting 18 USC 207, the post-employment representation statute**
- Proposed regulation and explanatory comments are 49 pages long**
- Comments are due to OGE by 19 May 03**

Training -- Annual Ethics Training

- **Required for SF 278 & OGE Form 450 filers**
- **In DoD, training must be “verbal” training every third year (1997, 2000, 2003, 2006) -- can be written training in the other years**
- **“Verbal” training can be in person, but if you use computer-based training, “verbal” can mean that an ethics counselor is standing by (via e-mail or telephone) to answer questions as the training occurs**

Training -- Ethics Training Opportunities

- **Army JAG School Basic Ethics Course - one-week course every April**
- **Regional OGE training courses - held in different cities around the country over the course of the year (no charge)**
- **Annual OGE conference - 3 day event - Air Force gets 10 slots**
- **AFMC Law Office's ethics update e-mails**

Travel -- Frequent Flyer Miles

- **Before 28 Dec 01, frequent flyer (FF) miles earned in official travel belonged to the govt.**
- **On 28 Dec 01, President signed FY 2002 DoD Authorization Act, which says FF miles earned in official travel may be kept for personal use.**
- **FF miles earned in official travel before, on, or after 28 Dec 01 are now employee's property.**
- **IRS Announcement 2002-18 says IRS will not assert tax liability for use of FF miles earned in official travel, unless they are converted to cash.**

Travel -- Wearing the Uniform in First Class

- **Sometime in early CY 2002, HQ USAF/DP issued a message that states:**

“The American public may negatively perceive Air Force personnel traveling on official duty in uniform who elect to use their frequent flyer miles to upgrade to business or first class. To preclude this perception, Air Force personnel, when using their frequent flyer miles to upgrade to business or first class, will not, repeat, will not, wear a uniform....”

Travel -- Riding Together

- **If a gift of transportation may not be accepted from the contractor under 31 USC 1353 (i.e., when the govt employee's travel is mission essential, such as for inspections, audits or site visits), then what?**
- **OpJAGAF 1996/158 -- sharing transportation is generally prohibited**
- **OpJAGAF 2000/78 -- sharing transportation is OK under a cost-reimbursable A&AS contract**
- **OpJAGAF 2001/22 -- sharing transportation is not OK under a non-A&AS cost-reimbursable support contract**

Travel -- Registration of Govt. Travel Card

- **There are sponsor companies that have arrangements with manufacturers whereby if you register your credit card with the sponsor company, and you use the credit card to buy a product from a participating manufacturer, the manufacturer will pay a percentage of the purchase price to the sponsor company, and the sponsor company will put that money into a Section 529 account for your child. A Section 529 account is a savings account for your child's education which has tax advantages. Air Force employees may register their government travel cards with such sponsor companies, and may retain the resulting benefits. [Opinion of the Air Force Judge Advocate General 2002/2, 25 Jan 2002]**

Miscellaneous -- Special Government Employees (SGEs)

- **“Special government employee” means an employee who is employed to perform duties for not more than 130 days in a 365-day period -- with or without compensation and on either a full-time or intermittent basis (18 USC 202(a))**
- **On 15 Feb 00, OGE posted on its website a 21-page pamphlet on the ethical rules that apply to SGEs**

Travel -- Spouse Travel at Govt Expense

- **On 15 Mar 02, DepSecDef issued a memo entitled “Travel by Family Members” which states: “Invitational travel orders for family members and unofficial travel by family members should be the rare exception, not the rule.”**
- **On 25 Mar 02, the guidance on spouse travel in AFI 24-101 was significantly changed**
- **Note: If travel by the spouse is “unofficial travel,” the DoD employee must pay to the US Treasury the full coach fare for the spouse’s travel (see DoD Directive 4500.56, para. E2.2.3.)**

Travel -- Travel Payments from Non-Federal Sources (31 USC 1353)

- **1 Jan 03 -- The implementing provisions in the JFTR & JTR were rescinded and we began using GSA's implementing regulation (i.e., 41 CFR Chapter 304)**
- **GSA has revised its regulation - revised version published in Federal Register on 17 Mar 03 and effective on 16 Jun 03**

Travel -- Travel to Retirement Ceremonies

- **A 24 Dec 02 change to AFI 65-601, Vol 1, added paragraph 10.2.10, which states:**

“TDY for Retirement Ceremonies. The use of APF for funding TDY travel to a retirement ceremony is not authorized. For a formal Change of Command ceremony, occasioned by a retirement, those who must be present to satisfy Change of Command protocol requirements are authorized travel for the Change of Command. Permissive TDY (PTDY) to attend a retirement ceremony is not authorized (AFI 36-3003, Military Leave Program).”

Miscellaneous -- Annual Agency Ethics Reports

- Every January all Air Force legal offices must report certain information about their ethics program to HQ USAF/JAG -- all Federal agencies report this info to OGE**
- HQ USAF/JAG has developed a computer database that collects this information - we all used it in Jan 2003**
- OGE recently changed the information that must be reported (24 Dec 02 DAEO-gram)**

Miscellaneous -- AFI 34-223 on Base-Affiliated Private Organizations

- **27 Nov 02 change in rules on naming POs after Air Force organizations**
- **27 Nov 02 change on Air Force providing logistical support to POs**
- **Recent change limiting number of PO fundraising events to two per quarter**
- **Recent change permitting raffles by POs**

Miscellaneous -- Federal Advisory Committee Act (FACA)

- On 19 Jul 01, GSA revised its implementing regulation for FACA (41 CFR Part 102-3)**
- On 15 Nov 02, GSA revised the memo on its website called “When FACA Is and Is Not Applicable To Interactions With The Private Sector”**
- On 10 Feb 03, DoD revised DoD Directive 5105.4 on Federal Advisory Committees**

Miscellaneous -- Political Activities

- **17 Sep 02 SECDEF message “DoD Public Affairs Policy Guidance Concerning Political Campaigns and Elections”**
- **25 May 02 message from Air Force Chief of Staff that commanders should not become involved in efforts by off-base organizations to “BRAC proof” the military base**

Miscellaneous -- OGE Reviews

- **OGE periodically publishes a list of the civilian Federal agencies and military installations where it will conduct a review of the ethics program**
- **The list is of the agencies & organizations OGE will review in the next 6-12 months**
- **OGE recently changed its procedures for ethics reviews (see 23 Dec 02 DAEO-gram)**

Miscellaneous -- Ethics Regulations

- **JERs published in 1993 are out-of-date**
- **Use the 1 Jan 03 version of:**
 - **5 CFR Part 2635 (Exec Branch ethics rules)**
 - **5 CFR Part 2634 (financial disclosure rules)**
 - **5 CFR Part 2638 (ethics training rules)**
 - **5 CFR Part 2640 (conflict of interest rules)**
- **Use the JER that includes Changes 1 - 4 (available on DoD/GC-SOCO website)**

Miscellaneous -- Ethics Resources

- **Ethics websites**
 - **AFMC Law Office**
 - **HQ USAF/JAG**
 - **DoD/GC-SOCO**
 - **Office of Government Ethics**
- **Bi-monthly pamphlets issued by HQ USAF/JAG**
- **Formats for ethics opinions on AFMC Law Office ethics website**

Miscellaneous -- Paralegals

- **A trained paralegal can:**
 - **Prepare Procurement Integrity 30-day letters**
 - **Prepare non-complicated 18 USC 207 opinions**
 - **Prepare widely attended gathering opinions**
 - **Prepare other gift opinions**
 - **Run the financial disclosure program**
 - **Prepare the semi-annual 31 USC 1353 reports**
 - **Gather and submit the data for the Annual Agency Ethics Report**
 - **Maintain & update your office's ethics website**